BIHAR STATE BOARD OF RELIGIOUS TRUST

v.

PALAT LALL AND ANOTHER

October 16, 1970

[M. HIDAYATULLAH, C.J. AND A. N. RAY, J.]

Bihar Hindu Religious Trusts Act, 1950—Public and Private Trusts—Distinction between—Requirements before endowment can be regarded as public.

An uncle of the two respondents made a will in December, 1908 by which certain properties were endowed by him in favour of an idol which certain properties were endowed by him in favour of an idol will that he had two wives and no son had been born to either of them. He nominated his two wives and his sister as "Mutawallies, managers and executives" to administer the endowment during their life-time and also provided that in consultation with his Guru they should appoint a successor to themselves. Upon the coming into force of the Bihar Hindu Religious Trusts Act, 1950, a notice was sent to the respondents by the Board constituted under the Act calling upon them to file certain particulars as required under the provisions of the Act on the view that the properties constituted a Public Hindu Religious Trust. The respondents thereafter filed a suit against the Board for a declaration that the said properties were not subject to the Act and were private endowments. After considering substantial oral and documentary evidence, the Trial Court held that the endowment was private to which the Act was not applicable. An appeal to the High Court was dismissed.

In the appeal to this Court it was contended that it could easily be inferred from the facts and circumstances that the endowment was a public one. The testator was childless and, therefore, there was no need for him to preserve the property for his family; that he had dedicated large properties for the upkeep of the idol, and the largeness of the properties indicated that it must have been for the benefit of the worshippers drawn from the public and not from the family; that on the extinction of the line of shebaits consisting of the two wives and the sister of the testator, the shebaitship was to go to a person of a different community on the advice of a stranger and that there was no mention in any of the deeds that the public were not to be admitted to the worship of the idol.

HELD : Dismissing the appeal,

(i) On the facts, it was clear that the idol had been in the family for a number of years and only the family was doing its regular worship; there was nothing to show that the public ever looked after this idol or were allowed a share in the worship as of right. Nor did the author of the dedication by his will make it clear that the public were to be admitted as of right. The whole arrangement showed that the further looking after of the idol was to be the concern of the family, and it was only under the nomination of the family that a particular person of the Vaishavnava belief was to be in-charge after the demise of the members of the family who were to become mutawallis after the death of the testator. It was obvious that in this family as there was no male issue and, therefore,, there was nobody to carry on worship and make arrangements for the *seba-puja*

A of the idol, as had been done in the family for a long time, some other kind of arrangement had to be made and this arrangement was made by the will. No more can be read into it than what was said there. [654 C]

(ii) There was no force in the contention that merely because an exemption was claimed in regard to the income of the endowment as being for charitable and religious purposes, this would make the endowment a public one. What a person does with a view to claiming exemption from income tax or agricultural income-tax, is not decisive of the nature of the endowment. The nature of the endowment is to be discovered only from the tenor of the document by which the endowment is created, the dealings of the public and the conduct and habits of the people who visit such a temple or Thakur Dwara. The claim to exemption was with a view to saving some income of the endowed property. It might have been motivated from other considerations and not that it was a public endowment. [655 A-C]

Babu Bhagwan Din and others v. *Gir Har Saroop and others*, referred to.

Deoki Nandan v. *Murlidhar* [1961] 3 S.C.R. 220; *Swami Saligramacharya* v. *Raghavacharya and others*, Civil Appeal 645 of 1964 decided on 4-11-65; distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 800 of 1967.

Appeal from the judgment and decree dated January 15, 1964 of the Patna High Court in Appeal from Original Decree No. 321 of 1959.

D. Goburdhun and *R. Goburdhun*, for the appellant.

R. C. Prasad, for respondent No. 1.

The Judgment of the Court was delivered by

Hidayatullah, C.J. This is an appeal against the judgment of the High Court at Patna, dated January 15, 1964, affirming the decision of the court of first instance. The case arose in the following circumstances :

One Chaudhary Lal Behari Sinha, who was the uncle of the two plaintiffs (respondents in this appeal), made an endowment by a will executed by him on December 2, 1908, by which certain properties were endowed in favour of an Idol called 'Ram Janakiji' also known as Shri Thakurji, installed in the family house of the testator. The testator said that his parents had installed this idol inside their house and they used to perform the puja and he had also been performing the puja since the time he had attained the age of discretion. The testator went on to say that he had married two wives but no son had been born to him from either of them, although he had a daughter and there was also a daughter's daughter. When he made the will, he had his two wives living, two sister's sons, Babu Uma Kant Prasad and Babu Gauri Kant Prasad, and a daughter's daughter Giriraj Nandini Kuari. By the will, he ar-

ranged for the seba-puja, ragbhog, samaiya, utsava of Thakurji, and for the festivals and expenses of the sadabart of the visitors, to be carried on, just as he had been doing. He nominated his two wives and his sister Ram Sakhi Kuari widow of Babu Gudar Sahai, as 'mutwallie, managers and executives' so long as they remained alive. He ordained that they should look after the management of the estate of Shri Thakurji with unanimous opinion, as had been done since long, that after their death, a son of a Srivastava Kayastha and Visnu upasak (worshipper of Lord Visnu) should be appointed 'Mutawalli, manager and executive' of the estate of Shri Thakurji, and that his wives and sister should appoint him during their life-time with the advice of and in consultation with a certain Shri Jawharikh, resident of Baikunthpur, who was his guru. He divided the house into two parts. The inner apartment of the house was to remain in the possession of his wives and sister during their life-time and the entire outer house together with the house situated at Sitamarhi, was to belong to the estate of Shri Thakurji. All money in cash and the movable properties belonging to him would remain in the custody of his wives. To the will was appended a schedule which showed the details of the properties. That included four villages in sixteen annas share, three villages in eight annas share, and one village in twelve annas share. The will also made certain bequests in favour of some of his other relations, but with them we are not concerned. They are minor as compared with the properties dedicated for the upkeep of Shri Thakurji.

When the Bihar Hindu Religious Trusts Act, 1950, came to be passed, a notice was sent to the plaintiffs by the Board constituted under that Act, calling upon them to file certain particulars on the basis of the Act, in view, as the notice said, of the properties constituting a public Hindu Religious trust. The present suit out of which this appeal arises was thereupon filed by the plaintiffs after serving a notice under s. 78 of the Act upon the Board, for a declaration that the suit properties were not subject to the Bihar Religious Trusts Act, and were private endowments.

Vast oral evidence was tendered in the case on behalf of the plaintiffs, and certain documents were filed. On the basis of the evidence in the case, which was accepted by the learned trial judge, it was decided that the endowment was private to which the Act was not applicable. Before the learned trial judge, reference was made to a decision of this Court, reported in *Deoki Nandan* v. *Murlidhar*(1). To that case, we shall come presently. The learned trial judge distinguished that case and held that endowment in the present case could not be held to be a public trust, because it was in favour of a family deity.

1[1961] 3 S. C. R. 220.

An appeal was unsuccessful in the High Court. The High Court agreed with the learned trial judge that the endowment created a private and not a public trust. The High Court did not consider the evidence in the case, which, according to the learned Judges, had been adequately summed up by the trial judge and whose conclusion was accepted. Before the High Court also, the same case of this court was cited. But it was also again distinguished on the grounds that this idol was a family idol and had not changed its character since the endowment or at the time of the endowment.

In this appeal, the only question that has been raised is whether the trust is a public trust, to which the Bihar Hindu Religious Trusts Act attaches, or is a private trust which does not come within the purview of that Act. Mr. Goburdhun, who argued the case, pointed out a number of circumstances from which, he said, it could be easily inferred that the endowment was a public one and that the Act applied. According to him, the testator was childless and, therefore, there was no need for him to preserve the property for his family, that he had dedicated large properties for the upkeep of the idol, and the largeness of the properties indicated that it must have been for the benefit of the worshippers drawn from the public and not from the family, that on the extinction of the line of shebaits consisting of the two wives and the sister of the testator, the shebaitship was to go to a person of a different community on the advice of a stranger and that there was no mention in any of the deeds that the public were not to be admitted to the worship of Thakurji. He also relied upon the same case to which we have referred, and also upon a decision of this Court in *Swami Saligramacharya* v. *Raghavacharya and others*(1).

As early as (*Babu Bhagwan Din and others* v. *Gir Har Saroop and others*)(2), the Privy Council distinguished between public and private endowments of religious institutions, particularly, temples and idols, and Sir George Rankin laid down certain principles to which attention may be drawn, because they were referred to in that Supreme Court ruling on which Mr. Goburdhun strongly relies. Sir George Rankin said that the dedication to the public was not to be readily inferred when it was known that a temple property was acquired by grant to an individual or family. He also observed that the fact that the worshippers from the public were admitted to the temple was not a decisive fact, because worshippers would not be turned away as they brought in offerings, and the popularity of the idol among the public was not indicative of the fact that the dedication of the properties was for public. This ruling was referred to in the case on which Mr. Goburdhun relies.

(1) CA. No. 645 of 1964 decided on 4-11-15.
(2) 67 I.A 1.

In that case, emphasis was laid on two matters and they are decisive of the case we have here. The first no doubt was that the dedicator in that case had no male issue, and that it would be unusual for a person to tie up the property for the use of a diety without creating a public trust, but the second was that a ceremony or pratishtha (installation of the idol), which was equivalent to utsarg (dedication), was performed and, therefore, the idol itself became a public idol after the ceremonies. This is not the case here where an idol had existed from before as a family idol. In the earlier case of this Court the installation of the idol and the dedication were both done at the same time, and the installation was public. This, in our opinion, was a very cardinal fact in that case. This was emphasized not only by the trial judge but also by the learned Judges of the High Court. The facts here are that the idol had been in the family for a number of years and only the family was doing the seba-puja in the Thakur Dwara, and there is no mention anywhere that the public ever looked after this idol and were allowed a share in the worship as of right. Further, by the will also the author of the dedication did not make it clear that the public were to be admitted as of right thereafter. The whole of the arrangement shows that the further looking after of the Thakurji was to be the concern of the family, and it was only under the nomination of the family that a particular person of the Vaishavanava belief was to be in-charge after the demise of the members of the family who were to become the mutawallis after the death of the testator. It is obvious that in this family there was no male issue and, therefore, there was nobody to carry on worship and make arrangements for the seba-puja of the Thakurji, as had been done in the family. Some other kind of arrangement had to be made and this arrangement was made by the will. No more can be read into it than what is said there.

Now, if it was intended that this should have been a public endowment, it is quite obvious that when the testator died, the testator would have thought of somebody from the public instead of the ladies who could not carry on the puja except through others. It was after his own death and his wives and sister were not available that a particular person was to be chosen for the seba-puja. There is no arrangement here that public were to look after or manage the Thakurji. At no stage any intervention of the public is either intended or allowed by the will in question.

Two other documents were brought to our notice, but they may be disposed of summarily. The first is a mortgage deed, exh. B, in which there is a recital about the property which was the subject of the endowment. But that document is silent about the nature of the endowment and is of no significance. The other document is a judgment of the Assistant Commissioner of Agricultural

A Income-tax, exh. C, in which exemption was claimed in regard to income as was set apart for charitable and religious trusts in terms of the trust deed. This is an attempt to show that the family regarded it as a public trust. What a person does with a view to claiming exemption from income tax or for that matter, agricultural income-tax, is not decisive of the nature of the endowment. The B nature of the endowment is to be discovered only from the tenor of the document by which the endowment is created, the dealings of the public and the conduct and habits of the people who visit such a temple or Thakur Dwara. The claim to exemption was with a view to saving some income of the endowed property. It might have been motivated from other considerations and not that it was C a public endowment.

This brings us to the second case which was cited before us. But even in that case, a reference was made by the learned Judges to the earlier case and they have extracted a passage from the earlier judgment, in which it was observed that "when property is dedicated for the worship of a family idol, it is a private and not a D public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers".

E In the present case, the idol was a family idol and the worshippers had all along been the members of the family. Indeed, the evidence is overwhelming on that score. The learned trial judge mentions that very important and leading persons gave evidence in that behalf. In the judgment of the trial judge, a list is given which includes P.Ws. 3,7,12,14,15 and 16 of village Kusmari. In addi- F tion there are P.W. 17, who is an advocate of Sitamarhi, P.W. 6 who is a respectable witness, being a chemist, P.W. 8 who is also a pleader, and P.Ws 11 and 13 who are mokhtears and acquainted with Somari Kuer. These respectable persons had occasion to know the family of Chaudhury Lal Behari Singh, and, therefore, were competent to speak on the fact that Shri Ram Janakiji were the family deities of Chaudhury Lal Behari Singh. In the case to G which we were presently referring, the circumstances connected with the establishment of the temple were such that they could be only consonant with a public endowment. It was no doubt a private temple of which the sole proprietor was one Madrasi Swamiji, but he, however, by the execution of the deed, decided to open the temple to the public. He was a man with no family and could not have H installed the deity for the members of his family. It was pointed out in that case that the deed was of such a recent date that evidence of subsequent conduct would not alter nature of the endowment as determined from the deed and that the decision was on a

question of fact. Even if we were to treat it as a question of law, because whether the trust is public or private, partakes of both fact and law, and we are satisfied in the present case the evidence is entirely one-sided. There is not one circumstance to show that the endowment was public endowment, and this being the case, we do not see any reasons to differ from the decision already arrived at.

On the whole, we have not been able to discover any reason why we should depart from the unanimous opinion of the High Court and the court below. Both the courts are agreed that the oral evidence as well as the documents indicate only a private trust and that there is nothing to show that the endowment enjoyed a public character at any time. The cases before this Court, which were cited earlier are easily distinguishable.

The result is that the appeal fails. The High Court in its order did not award costs to the plaintiffs. The reasons given by the High Court for denying costs to the plaintiffs apply here also. We, accordingly, order that the costs shall be borne as incurred.

R.K.P.S. *Appeal dismissed.*